IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5553 OF 2005

Mrs. Delferooz Darius Dorabjee,
Age 35 years, Occ. Service,
Residing at C/o. Mr. Rusi Boocha,
Flat No. 59, Wonderland, 5th Floor,
East Street Wing, 7, M.G. Road,
Pune 411 001. ... Petitioner

Versus

1. The State of Maharashtra,

2. Poona Parsi Panchayat,
A registered Charitable Trust,
having its office at 12,
Mahatma Gandhi Road,
Pune 411 001.

3. Mr. Darius Marazban Dorabjee,
Age 35 years, Occ. Business,
Residing at 2, Gangotri Gardens,
43, Lullanagar, Pune 411 040
and
B-27, Grace Terrace, 600, Sachapir
Street, Pune 411 001. ... Respondents

Mr. P.S. Dani for Petitioner.

Mrs. M.P. Thakur, A.G.P. for R. No. 1.

Mr. R.A. Dada, Sr. Counsel with Mr. A.A. Kocharekar for R.No. 3.

CORAM : F.I. REBELLO &
DR.D.Y.CHANDRACHUD,JJ.
DATED : MARCH 03, 2006

ORAL JUDGMENT (Per F.I. Rebello,J.):

. Rule. Heard forthwith.

. The Petitioner herein had filed a petition for divorce against Respondent No. 3 being Marriage Petition No. 6 of 2001 which is pending before the District Court, Pune under the provisions of the Parsi Marriage and Divorce Act, 1936 hereinafter referred to as the Act. The Respondent No. 2 is the Poona Parsi Panchayat, a registered charitable Trust in the city of Pune. By the present Petition, the Petitioner has prayed for a writ or direction in the nature of certiorari to quash and set aside the Government notification dated 10.2.2005. By that notification, the State Government under the purported exercise of its powers under Section 24 and 25 of the Act, has appointed 11 persons as delegates for the period of 10 years from the date of publication of the notification, to aid in the adjudication of cases arising under the provisions of the Act, in the Parsi Matrimonial Court, at Pune. The Petitioner has further prayed for quashing of the said notification and to direct Respondent Nos. 1 and 2 to immediately re-start the process of election for appointing delegates in the Court at Pune for

complying with the mandatory proceedings as required under Section 25 of the Parsi Marriage & Divorce Act, 1936. The further prayer is for quashing and setting aside the order dated 13.07.2005 passed by the District Court, Pune as Parsi Matrimonial Court, whereby objection raised by the Petitioners to the issuing of notice to delegates on the ground that Petitioner is going to challenge the appointment of delegates who have been appointed vide Government notification dated 10.2.2005 was rejected. The Petitioner has also prayed that her application dated 20.4.2005 Exh. I to the Petition, be allowed which was an application not to issue any notice to the delegates on the ground that most of the delegates have availed the services of the respondent for catering and some of the Delegates are even his relatives or relatives of the Advocate of the Respondent. It is Petitioner's contention that except for delegate at Sr. No. 3, all the other delegates are interested and as such the Petitioner apprehends bias on their part.

2. Section 24 and 25 of the Act reads as under :

"24. Appointment of delegates - (1) The State Government shall, in the Presidency-towns and districts subject to their respective Governments, respectively appoint persons to be delegates to aid in the adjudication of cases, arising under this Act, after giving the local Parsis an opportunity of expressing their opinion in such manner as the respective Governments may think fit.

(2) The persons so appointed shall be Parsis, their names shall be published in the Official Gazette and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits, not more than twenty.

25. Power to appoint new delegates - The appointment of a delegate shall be for

> ten years, but he shall be eligible for reappointment for the like term or terms. Whenever a delegate shall die, or have completed his term of office, or be desirous of relinquishing his office, or refuse or become incapable or unit to act or crease to be a Parsi, or be convicted of an offence under the Indian Penal Code (45 of 1860) or other law for the time being in force (involving moral turpitude), or be adjudged insolvent, then and so often the State Government may appoint any person being a Parsi to be a delegate in his stead; and the name of the person so appointed shall be published in the Official Gazette. "

. The other relevant section is Section 27 which reads as under :

> "27. Selection of delegates under sections 19 and 20 to be from those appointed under Section 24 - The delegates selected under sections 19 and

20 to aid in the adjudication of suits under this Act, shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the State Government under Section 24.

Provided that each party to the suit may, without cause assigned, challenge any two of the delegates attending the Court before such delegates are selected and no delegate so challenged shall be selected."

3. It is the case of the Petitioner that the impugned notification nominating the delegates has been done without following the procedure prescribed under Section 24 and 25 of the Act. This exercise ought to have been undertaken by Respondent No. 1 in terms of normal procedure which was to call upon the Panchayat of the local area to issue advertisement in the newspaper and to call upon them to recommend the names of the

suitable Parsis to fill in the vacancies of the delegates. The panchayat after the request is made by the Government has to issue advertisement in a newspaper having wide publication and invite names of persons desirous of standing for election tobe held for the purpose of making such appointments. The persons who are desirous to stand as candidates, are required to send their proposal in a prescribed form along with the signature of the proposer and seconder and also signed by the concerned candidate. Those elections, it is set out, has to be held by the members of Respondent No. 2. After the requisitions are received, the Panchayat must hold a meeting in which elections are tobe held and persons securing higher number of votes are to be recommended to the State Government for being nominated as candidates. Before election, the Panchayat has to publish a list of the contesting candidates by giving a public advertisement. The Petitioner relies upon the procedure followed by the Bombay Parsi Panchayat which is annexure D to the Petition. At the outset, it may be pointed out that these are not rules framed by the Government, but is the

procedure which is being followed by the Bombay Parsi Panchayat. It is also pointed out, that to the knowledge of the Petitioner while appointing delegates for Pune, no such procedure was followed. One advertisement was issued by Advocate Dara K. Irani who was Chairman of Respondent No. 2 and currently vice Chairman. It was published in the newspaper "Jam-e-Jamshed" dated 9.11.2003. No public notice was given to the local Parsis calling for the objections nor any elections were held. The notice by Respondent No. 2 merely invited willing persons to act as delegates. Jam-e-Jamshed newspaper has insufficient circulation in Pune City, being a Mumbai weekly Gujarati newspaper. No election was held despite of the fact that 21 persons has responded to the public notice as potential candidates. After the advertisement was published, Respondent No. 2 without following the procedure simply submitted 11 names to be appointed as delegates under the Act to the District Court, Pune. The District Judge, Pune by his communication dated 3.3.2004 informed the Secretary, Government of Maharashtra not to consider the name of one of the delegates forwarded

for appointment since the delegate has criminal record.

4. A reply has been tendered on behalf of the State Government. It is set out that the Government has a legal obligation to make appointment of delegates under Section 25 of Parsi Marriage and Divorce Act, 1936 for rendering assistance to the Court to adjudicate cases arising under the said Act. The Petition filed by the Petitioner is pending before the District & Sessions Court, Pune. The Law and Judiciary Department had appointed 9 delegates under Notification dated 15.1.1990 for a term of 10 years as prescribed under the Act. The period expired on 15.1.2000. As the Government did not appoint the new delegates, the cases under the Act could not be decided. The District Judge requested the Government to appoint new delegates at the earliest. The District & Sessions Judge, Pune contacted one Mr. Dara K. Irani, the President of Pune Parsi Panchayat who had published a notice in Parsi Newspaper inviting applications from willing Parsis to be appointed as delegates. About 21

applications of willing Parsis were received by the President of Parsi Panchayat and except for one, remaining 20 applications were received by the Government for appointment of the new delegates.

. The Government requested the District & Sessions Judge, Pune to furnish a list of 9 to 10 applicants only. The District Judge, Pune vide letter dated 29.6.2004 sent the names of 11 persons along with list of 20 Parsis with their applications and biodata etc. and recommended 12 names after consulting and holding joint meeting with the local Parsis and applicants. Out of 13 applicants, 11 attended the meeting while one applicant remained absent. The 11 applicants who attended the meeting expressed their willingness to cooperate and render their service to the Parsi Community. Their names were forwarded by the District & Sessions Judge with recommendations to the Government. It was also informed that if the 11 persons were falling short, additional delegates could be selected from the list bearing in mind, the ratio of male and female delegates which is required to be maintained. The revised proposal was accepted by

the Government and after scrutiny of the draft notification and obtaining sanction of the Government, the impugned notification dated 2.2.2005 was published in the Government Gazette. It is therefore, set out that the contention of the Petitioner that no procedure was followed before making any appointment to the post of delegates under the provisions of Sections 24 and 25 of the Parsi Marriage and Divorce Act, 1936 is not correct.

5. With this background, the question that emerges is whether the appointment suffers from any procedural infirmity. No rules or instructions have been issued under the Act, laying down the procedure for appointment of delegates. A power to appoint under Section 24 is conferred on the State Government after giving local Parsis an opportunity of expressing their opinion in such a manner as the Respondent Government may think fit. The Act is a Central Legislation. The power under Section 24 is conferred on the State Government. The requirement therefore, is that before the appointment, local Parsis are to be given an opportunity of expressing

their opinion. The section itself therefore, contains the guidelines for appointment of delegates. The limited issue therefore, would be as to whether the procedure followed for appointing delegates by notification dated 2.2.2005 can be said to be in violation of the procedure prescribed under Section 24.

. As we have noted earlier, the advertisement came to be issued by the then President of the Pune Parsi Panchayat. Pursuant to the advertisement, 20 applications were received. The Government also received names of the willing applicants and requested the District & Sessions Judge to furnish a list of 9 to 10 applicants, as earlier by notification dated 15.1.1990, 9 delegates were appointed. Under the Act, the Judge has to be aided by 5 delegates considering Section 19 of the Act. Under Section 27, each party to the suit may, without cause assigned, challenge any two of the delegates attending the Court before such delegates are selected and no delegate so challenged shall be selected. In other words, for two challenges by each of the party, as provided, that will leave 5

delegates. The District Judge sent 11 names by his letter dated 29.6.2004 along with list of 20 Parsis with their applications, biodata and recommended names of 12 persons. This was done by the District Judge, after consulting and holding joint meeting with the local Parsis and applicants. In other words, the procedure of consulting Parsi community was exercised by the State Government through District and Sessions Judge, Pune. The District Judge, is a non-Parsi and a person having no interest in any of the delegates. The very fact that the District Judge after consulting the Parsis recommended 11 names and also independently had written that one delegate had a criminal record and the name should be deleted would by itself indicate that the names were forwarded having due regard to the character and antecedents of the candidates. This also shows that the names were recommended after consulting the local Parsi Panchayat. The State Government only thereafter issued notification appointing delegates. In our opinion, there has been substantial compliance with the requirement of giving the community an opportunity. The mere fact that notice was published in Gujarati

newspaper circulated from Mumbai, by itself would be of no consequence considering that the community is small and there were 20 applications. In our opinion, the fact that Respondent No. 2 had issued advertisement, and pursuant to the advertisement, applicants were received and the District Judge heard the views of the local Parsis and applicants, on behalf of the State Government, would indicate that an opportunity contemplated under Section 24 had been offered and or complied with. The challenge to the notification on the ground that no opportunity was given, has no substance. The mere fact that in Mumbai, a different procedure is followed, need not necessarily mean that the same procedure has to be followed in other districts also. The procedure set up in Mumbai is not pursuant to any provisions of the Act and or any Rules or instructions issued by the Government. There was therefore, no requirement that the Government should adopt or follow the procedure as followed in Mumbai. The main contention must therefore, be rejected.

6. Considering the controversy involved, we asked

the parties as to whether they would agree to the matter being transferred to the Parsi Court exercising jurisdiction in the city of Mumbai. The Counsel for the Respondent informed the court that on account of the fact that the Respondent has to reside and carry on his business at Pune, he was not in a position to give his consent. Be that as it may. It will be open to the Petitioner to pursue the proceedings alleging bias in respect of any delegate, before the Pune Court and if the Pune Court accepts the said contention and in the event there are less then five delegates who can assist the court in trying the matrimonial petition filed by the Petitioner, the State Government can either notify more names or the Petitioner if the Government takes no steps to move the Court for transfer of the matter.

. With the above directions, rule discharged. There shall be no order as to costs.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)